

#### **IV. MRA'S FILING OF THE "REQUEST FOR REVOCATION" IS AN ABUSE OF THE PROCESSES OF THE COMMISSION, SHOWS LACK OF CANDOR, AND SHOULD THEREFORE BE DISREGARDED.**

Both of the licenses purchased by MRA had a minuscule number of units (WSD94 and WIJ226 had only 17 units between them). This raises the question why MRA would acquire licenses, known to MRA to be void for years, for so few units. Such licenses are valueless on their own economic terms.<sup>16</sup> The only reason for MRA to have acquired them is to provide a pretext to interfere with MWS's potential transactions with Nextel. MWS is not sure whether MRA's pleading is filed as part of a blackmail plot<sup>17</sup> or to interfere with MWS's business. However, its frivolousness comes with an ulterior motive, and this pleading amounts to an abuse of the processes of the Commission. Abuse of the processes of the commission is a serious matter, which can disqualify a licensee from holding licenses for lack of character.<sup>18</sup> The integrity of the Commission must be guarded, as it is the trustee of the public's rights in the airwaves. Closely related to this evil is misrepresentation or a "lack of candor" by a licensee, based on either deliberate concealment or omission of material facts.<sup>19</sup> MWS respectfully suggests that MRA's use of licenses which it knew to be void when it acquired them, to delay the assignment of a competitor's license, or potentially extract money from a competitor, is a classic example of an abuse of process.

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<sup>16</sup> The mobile count exceeds the FCC limits. Additional units cannot be placed on the channels. Considering the costs of operating a repeater, it would be non economical to set up a repeater for only seven units on one channel, and set up a repeater for ten units on another location, particularly when there is no hope of increasing the mobile count.

<sup>17</sup> Maybe "greenmail" is the better term.

<sup>18</sup> Abuse of process is the use of a procedure or process or rule in a manner not authorized or contemplated, or to use same in a manner that subverts the underlying intended purpose of that process or rule. **Broadcast Renewal Applicants**, 3 FCC Rcd 5179 (1988)

<sup>19</sup> **Fox River Broadcasting, Inc.** 93 FCC2d 127. **FCC v. WOKO**, 329 US 223 (1946)

The failure to advise the Commission in its pleading that its licenses for which it seeks protection are void amounts to both lack of candor and intentional concealment of a material fact.<sup>20</sup>

#### V. MRA'S VOID LICENSES ARE NOT EVEN CO-CHANNEL TO MWS COMMUNICATIONS' LICENSE.

The absurdity of MRA's argument regarding what constitutes a channel is self evident. The FCC has authority to regulate emission bandwidth extending out both sides from the center of a channel. This is known as "occupied bandwidth", and is clearly specified in the license authorization. The FCC defines the spacing between channel centers in the 450-512 mHz band as 6.25 kHz. To accept MRA's position is to believe that the five channels (the center channel and the two channels above the center and two channels below the center are, in fact, all parts of the same channel.

Since 1997, the Commission has required capability of operation with 12.5 kHz channel spacing as a condition for type acceptance of new equipment. In 2005 6.25 kHz spacing will be required by the Commission for type accepted equipment.<sup>21</sup> Thus, MRA's complaint is actually about channels that are **actually two channels** away from the center frequency of MRA's licenses (12.5 kHz). This discussion is probably moot, in light of the voidness of MRA's licenses, however, it is made to further demonstrate the

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<sup>20</sup> Actually, there is another count against them for "lack of candor" or deliberate misrepresentaion, which occurred when MRA applied for assignment and accepted assignment of licenses which it knew were void. This issue can be addressed, if and when the Commission fully investigates MRA and Mark Abrams.

<sup>21</sup> If MRA's logic were applied to automobiles, drivers would still be required to have a man walking in front of the car swinging a red lantern so that the horses would not be frightened! MRA's argument is contrary to the Commission's mandate of encouraging efficient use of spectrum.

absurdity of MRA's factual position.<sup>22</sup> MRA's argument does not take into account current engineering standards and practices.

### REQUEST FOR RELIEF

By reason of all of the foregoing facts and arguments, it is requested that the Commission promptly deny MRA's so called "Request for Revocation". Furthermore, in light of the facts which have come to light, including the abuse of process, lack of candor, and concealment of material facts by MRA, it is further requested that an investigation be launched by the Commission regarding whether MRA should be sanctioned for this frivolous pleading, and whether MRA and its partner Mark Abrams, lack the requisite character to continue to hold Commission licenses.

Respectfully Submitted,

MWS Communications, LLC

By: 

Alan M. Lurya, Esq.

Its Attorney

*Law Offices of*

**ALAN M. LURYA**

17662 Irvine Blvd. Suite 18  
Tustin, California 92780

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<sup>22</sup> By making such an absurd argument, MRA once more evidences bad faith in bringing this "Request for Revocation".

## **DECLARATION OF CHARLES WELLS**

I, Charles Wells, declare, that I am, and at all times relevant hereto have been, a manager of MWS COMMUNICATIONS, LLC, a limited liability Company, and I am, and at all times relevant hereto, have been also the President and a director of MOBILE UHF, Inc., and Mobile Radio Services, Inc. If called as a witness, I could competently testify to the facts contained herein.

I have reviewed this Opposition to Request for Revocation, and I state that all facts herein are, true and correct, except as to those items stated on information and belief, and as to them, I believe them to be true.

With respect to WSD94, the original license holder, J. Schwartzman, & Supply, dba JS Screw Mfg, in 1993 was a customer of Motorola on a community repeater. Mobile Radio Services, Inc. purchased that community repeater, and the rights to the customer. Attached as Exhibit A, is a copy of a letter sent to J. Schwartzman & Supply by Motorola informing them of the transfer. In 1994, Mobile Radio Services, Inc. shut down the community repeater. J. Schwartzman & Supply was placed on the private carrier, licensed to Mobile UHF, Inc. who programed its private carrier repeater to accept the J. Schwartzman & Supply tones (5A). This customer therefore discontinued operation under their call sign, WSD94,, and began operation on Mobile UHF's private carrier repeater, and subsequently operated thereafter under the call sign of the private carrier, which was WIJ759. A copy of the private carrier license is attached as Exhibit B.

Therefore, when the community repeater shut down, and WSD94 operations permanently shut down, the license became void automatically. J. Schwartzman & Supply subsequently stopped using Mobile UHF's private carrier, and has not operated on the channel for many years in any manner. I have monitored the channel, for years, and I am personally aware of the traffic and customers thereon.

I declare under penalty of perjury under the laws of the United States, that the foregoing is true and correct. Executed this 16 day of April 2002 at Carson Avenue, California.

Charles R. Wells  
CHARLES WELLS

**EXHIBIT** A

**MOTOROLA**

**Communications and Electronics Inc.  
Western Division  
North America Group**

October 18, 1993

Swartzman Manufacturing & Supply  
7040 Laurel Canyon Blvd.  
North Hollywood, CA 91605

Dear Motorola Customer:

Motorola has made arrangements to sell our Community Repeater that your company shares on MT LUKENS. The repeater will remain at the same location and be owned and maintained locally by:

**MOBILE RADIO SERVICE, INC.  
11892 Cardinal Circle  
Garden Grove, CA 92643  
Tel. No. 714-638-5411**

Effective December 1, 1993, Mobile Radio Service, Inc. will be billing you for your repeater service. Any pre-paid repeater service will be credited to your Motorola account. Please call Motorola's Customer Service Center at (800) 247-2346 to request a refund.

Thank you for allowing Motorola to provide your communications needs. If you have any questions, please feel free to call me at 800-445-3620 ext. 8359.

Regards,

**Al Pittard  
Antenna Site Manager  
Network Services Western Division**

cc: Mobile Radio Service, Inc.

**EXHIBIT** B



## RADIO STATION LICENSE

Licensee Name: MOBILE U H F INC

Radio Service: BUSINESS

Call Sign: WJ3759

File Number: 9004412758

License Issue Date: 900518

License Expiration Date: 950518

Frequency Advisory Number: 900710012

Number of Mobiles by Category: Vehicular \*140\*\* Portable \*13\*\* Aircraft \*\*\*\*\* Marine \*\*\*\*\* Pager \*\*\*\*\*

## Station Technical Specifications

Ch	Frequencies (MHz)	Station Class	No. of Units	Emission Designator	Output Power (Watts)	L.E.R.P. (Watts)	Ground Elevation	Ant. Hgt. To Tip	Antenna Latitude	Antenna Longitude
1:	507.91250	F86	1	20K0F3E	100.000	1000	3885	55	33-47-48	117-37-22
							HAAT	2434		
	540.91250	FX1Y	25	20K0F3E	35.000	35.000				
	507.91250	MO	153	20K0F3E	35.000	35.000				
	510.91250	MO	153	20K0F3E	35.000	35.000				
2:	507.91250	F86	1	20K0F3E	100.000	1000	5070	50	34-16-09	118-13-58
							HAAT	2543		

## TRANSMITTER STREET ADDRESS

## CITY

## COUNTY

## STATE

11809 BLACKSTAR CANYON RD

CORONA

ORANGE

CA

MOUNT LUKENS

LA CRESCENTA

LOS ANGELES

CA

## AREA OF OPERATION

1: 30 MIRA 33-47-48N 117-37-22W CORONA ORANGE CA

CONTROL POINTS: 11892 CARDINAL CIR GARDEN GROVE CA

CONTROL POINT PHONE: 714-539-7772

SOCIAL COND: SEE ATTACHED #35

TY CODE: 04

EMISSION DESIGNATOR(S) CONVERTED TO CONFORM TO DESIGNATOR(S)  
OUT IN PART 2 OF THE COMMISSION'S RULES.

900518M 344 1 12

MOBILE U H F INC  
CHUCK WELLS  
11892 CARDINAL CIR  
GARDEN GROVE CA 92643FEDERAL  
COMMUNICATIONS  
COMMISSION

This authorization becomes invalid and must be returned to the Commission if the stations are not placed in operation within eight months, unless an extension of time has been granted. EXCEPTION: 800 MHz trunked and certain 900 MHz station licenses cancel automatically if not constructed within one year.

PAGE 1 OF 1

FCC 574-C  
JULY 1988

Rules 3) There are no time limitations for placing SIMBA stations in operation.

FCC 574-L April 1995

APR-16-2002 16:52

**ATTACHMENT No. 7**

**ATTACHMENT No. 7**

**ATTACHMENT No. 7**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re Application for	)	
	)	
Consent to the Assignment of the License	)	
for Business Radio Service <b>Station WII622</b>	)	<b>FCC FILE NO. 0000644810</b>
from Charles & Cornelia Dray d/b/a Chino	)	
Hills Patrol to <b>Mobile Relay Associates</b>	)	

**SUPPLEMENT TO PETITION FOR RECONSIDERATION**

James A. Kay, Jr. ("Kay"), by his attorneys and pursuant to Section 405 of the Communications Act of 1934, 47 U.S.C. § 405, as amended, and Section 1.106 of the Commission's Rules and Regulations, 47 C.F.R. § 1.106, hereby supplements his March 11, 2002, *Petition for Reconsideration* in the above-captioned matter, and respectfully shows the following:

1. Attachment A hereto is the *Declaration Under Penalty of Perjury of Cornelia Dray*, executed on July 29, 2002. The attached copy is a copy of a facsimile transmission of the declaration. The original, executed declaration will be provided upon request.
2. Ms. Dray, the putative assignor in the above-captioned application proceeding, now personally confirms what was asserted and documented in Kay's *Petition for Reconsideration*. Specifically, in late 1993, Dray and her husband discontinued operations under Motorola-owned community repeater facilities authorized by Call Sign WII622. They never reestablished or resumed operations of facilities under that call sign, nor did they authorize anyone else to do so.
3. Ms. Dray assumes she may have unwittingly submitted an application to renew the now-defunct authorization in late 1997. She surmises that she possibly received a renewal notice and assumed it had something to do with the mobile units being then serviced by Lucky's

Two Way Radios, and therefore may have sent it back with the specified filing fee. In any event, she certainly had no intention to renew an abandoned authorization.

4. In late 2001, Ms. Dray spoke with someone representing Mobile Relay Associates (“MRA”) and agreed to accept Two Thousand Dollars for assignment of an FCC license. She accepted the offer because she was desperate for money at the time, but she did not understand that this involved assigning a license that had already expired. Had she understood that, she would not have agreed to the offer. Significant, neither the person who contacted her nor anyone else from MRA asked any questions about the license or whether the facilities had been timely constructed and maintained in operation.

5. Finally, Ms. Dray’s intentions with regard to the authorization, to whatever extent it still exists, is to honor a contractual obligation to either cancel the authorization or assign it to Kay. Indeed, as explained in Kay’s December 4, 2001, *Petition for Enforcement Action* at ¶ 16 and Ex. 10 (see *Petition for Reconsideration*, Attachment No. 1), Dray has been under specific court order to honor this agreement since November 1998. To that end, Attachment B hereto is an executed FCC Form 405A seeking the cancellation of the license for Station WII622. The original, executed copy will be supplied upon receipt.<sup>1</sup>

6. In view of the foregoing, a number of things are indisputable:

- (a) The above-captioned authorization had automatically cancelled due to permanent discontinuance of operation years before MRA fraudulently attempted to obtain it by assignment.
- (b) MRA made no attempt to verify the validity of the authorization, whether the facilities had been timely constructed, or whether operations had been properly maintained before arranging for the license assignment.

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<sup>1</sup> Dray is unable to cancel the authorization electronically at this time because it is improperly listed in MRA’s name in the ULS database.

- (c) Dray had no intention of assigning a dead authorization, and had no legal authority to assign the license even if it had been effective due to her contractual obligation to Kay and a specific court order compelling her compliance therewith.

7. The above factors, standing alone, are more than sufficient to warrant—indeed, to required—the immediate setting aside of the above-captioned consent to the license assignment, the cancellation of the authorization, and its purging from the database. Further, this information together with the material already presented in the *Petition for Reconsideration* raises a substantial question of material fact whether MRA and its principals and affiliates have intentionally exhibited a lack of candor, made misrepresentations, and abused the Commission's procedures by knowingly filing assignment applications for dead licenses. It would be an abdication of the Commission's regulatory authority to continue to ignore such blatant violation of the public trust by MRA.

Respectfully submitted on August 1, 2002,

By: 

Robert J. Keller  
Attorney for Petitioner

Law Office of Robert J. Keller, P.C.  
1850 M Street, N.W. – Suite 240 (20036)  
P.O. Box 33428 – Farragut Station  
Washington, D.C. 20033-0428

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Facsimile: 202-223-2121  
Email: rjk@telcomlaw.com

**ATTACHMENT No. A**

**ATTACHMENT No. A**

**ATTACHMENT No. A**

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1           DECLARATION UNDER PENALTY OF PERJURY OF CORNELIA DRAY

2           I, CORNELIA DRAY, hereby depose and state as follows:

3           1.       With my husband, Charles Dray, I previously held a  
4 land mobile authorization under the Call Sign WII622 for use in  
5 connection with the Chino Hills Patrol, a name under which we did  
6 business. This license covered our use of a community repeater  
7 at Sunset Peak that was owned and maintained by Motorola.

8           2.       In late 1993, we received a letter from Motorola,  
9 dated October 18, 1993, advising us that the repeater had been  
10 sold to Lucky's Two-Way Radios in Van Nuys, California. Shortly  
11 after that we were contacted by a representative of Lucky's and,  
12 on or about December 2, 1993, I signed a Repeater Agreement with  
13 Lucky's Two-Way Radios for service on its private carrier  
14 station. This allowed us to operate on Lucky's repeater but on  
15 the same frequency as before. As part of that Repeater  
16 Agreement, I also agreed to execute forms to either cancel my  
17 license or assign it to Mr. James A. Kay, Jr., the principal of  
18 Lucky's Two Way Radios. I did in fact sign such documents.

19          3.       Subsequent to receiving the Motorola letter, neither  
20 I nor my husband ever constructed or placed into operation any  
21 replacement repeater pursuant to the WII622 license, nor did we  
22 contract with anyone else to do so on our behalf.

23          4.       In late 1997 I received a notice from the FCC. I was  
24 not entirely sure what this was, but I assumed it had something  
25 to do with the mobile units we were operating, so I signed it and  
26 mailed it back with the specified payment. I now realize that  
27 this was probably a renewal for WII622. Had I understood at the  
28 time that this was a request to renew a license that was already

1 abandoned and cancelled, I would not have sent it back.

2 5. In late 2001 I was contacted by a woman named Joyce  
3 Peters representing Mobile Relay Associates ("MRA"). She stated  
4 that MRA would pay me <sup>TWO</sup> ~~One~~ Thousand Dollars (<sup>2</sup> ~~\$1~~,000.00) for my FCC  
5 licenses. I was broke at the time and desperate for money, so I  
6 agreed. Had I understood at the time that this was an  
7 application to assign a license that was already abandoned and  
8 cancelled, I would not have agreed to it.

9 6. Neither Joyce Peters nor anyone else from MRA ever  
10 inquired of me anything regarding the construction and continued  
11 operation of the station. Indeed, I was not asked any questions  
12 at all regarding the license.

13 7. My intentions with regard to the authorization, to  
14 whatever extent it still continues in effect, is to honor my  
15 December 1993 contract to either cancel the authorization or  
16 assign it to Mr. Kay. I renounce and revoke any agreement I may  
17 have made to assign the license to MRA. I feel that I was  
18 improperly induced to make that agreement under false pretenses  
19 and/or without adequate understanding and knowledge. I also  
20 realize that I did not actually have the authority to make any  
21 such agreement because (a) I had abandoned the license in 1993,  
22 and (b) to whatever extent the license continued in existence, I  
23 was under contractual obligation to cancel it or assign it to Mr.  
24 Kay.

25 ///

26 ///

27 ///

28 ///



8. In view of the foregoing, it is my desire that the FCC would rescind or revoke any assignment of the license for Station WII622 to MRA.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 29 day of July, 2002.

Cornelia Dray  
Cornelia Dray

**ATTACHMENT No. B**

**ATTACHMENT No. 2**

**ATTACHMENT No. B**

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**FCC 405A**Approved by OMB  
3060-0107  
Expires 4/30/95  
See instructions for  
public burden estimate.**UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION**FOR  
FCC  
USE  
ONLY**PRIVATE RADIO APPLICATION  
FOR RENEWAL, REINSTATEMENT AND/OR NOTIFICATION  
OF CHANGE TO LICENSE INFORMATION**1. APPLICANT NAME **CHARLES DRAY & CORNELIA DRAY**2. MAILING ADDRESS (Line 1) **P.O. BOX 1814**

MAILING ADDRESS (Line 2)

3. CITY **CHINO**

4. STATE

**CA**

5. ZIP CODE

**91709**

6. CALL SIGN OR OTHER FCC IDENTIFIER

**WII622**

7. FEE TYPE CODE

8. FEE MULTIPLE

9. FEE DUE

FOR FCC USE ONLY

\$ **0**

## 10. PURPOSE OF APPLICATION

☐ RENEWAL OF LICENSE (FEE REQUIRED)☐ REINSTATEMENT OF LAND MOBILE LICENSE  
(FEE REQUIRED)☐ NOTIFICATION OF NAME CHANGE WITHOUT CHANGE  
IN OWNERSHIP, CORPORATE STRUCTURE OR ENTITY  
(NO FEE REQUIRED)  
FORMER NAME OF LICENSEE:☐ NOTIFICATION OF MAILING ADDRESS CHANGE  
(NO FEE REQUIRED)☒ NOTIFICATION OF STATION CLOSURE,  
CANCEL LICENSE LISTED IN ITEM 6  
(NO FEE REQUIRED)☐ LAND MOBILE NOTIFICATION OF CANCELLATION FOR  
CONVERSION TO PRIVATE CARRIER. (NO FEE REQUIRED)  
CANCEL THE FOLLOWING LICENSES:**WII622**

11. RADIO SERVICE

**IB**

13. FILE NUMBER

**9204414196**

14. CLASS OF STATION(S)

**FB4, MO**12. LOCATION OF TRANSMITTER(S). (GIVE DESCRIPTION OF LOCATION SUCH AS STREET,  
CITY, STATE, COORDINATES, ETC.)**SUNSET PEAK, UPLAND, CA****15220 YORBA, CHINO, CA****CERTIFICATION**

1. Applicant waives all claims for the use of any specific frequency regardless of prior use by license or otherwise.
2. Applicant will have unlimited access to the radio equipment and will control access to exclude unauthorized persons.
3. Neither applicant nor any member thereof is a foreign government or representative thereof.
4. Applicant certifies that all statements made in this application and attachments are true, complete, correct and made in good faith.
5. Applicant certifies that the signature that appears on this application is that of a person with the proper authority to sign on behalf of the party represented, as stated in U.S.C., Title 47, Section 1.913.
6. By checking YES, the applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g. corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits, that includes FCC benefits, pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

☐ YES☐ NO**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(A)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).**

→ SIGNATURE

*Cornelia M. Dray*DATE **7-11-02**

FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.

**Certificate of Service**

I, Robert J. Keller, counsel for Marc D. Sobel, hereby certify that on this 17th day of September, 2002, I caused copies of the foregoing **SUPPLEMENT TO PETITION FOR RECONSIDERATION** to be served, by U.S. mail, to the following:

Charles W. Kelley, Chief  
Investigations and Hearing Division  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street, S.W. – Room 3-B431  
Washington, D.C. 20554

William H. Knowles-Kellett, Esquire  
Investigations and Hearing Division  
Enforcement Bureau  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, Pennsylvania 17325-7245

A handwritten signature in black ink, reading "Robert J. Keller", is written over a horizontal line. The signature is stylized with a large initial "R" and a checkmark-like flourish above it.

Robert J. Keller